

cannot be tendered in evidence by resorting to the provisions of Section 294 of the Code."

(4) Thus, the mere fact that Dr. Gurmanjit Singh who came to the premises of the trial Court but was returned un-examined when the defence counsel told that he had no objection for placing the postmortem report on record as an exhibit, could not give the post-mortem report the evidentiary value of a proved document regarding cause of death because the information regarding sufficiency or otherwise of the injury to cause death has to be deposed by the Medical Officer. In the absence of the substantive piece of medical evidence it appears that the trial Court was led by probabilities in this case.

(5) The occurrence relates to 1st July, 1991 and the appellant had been in custody since 1st August, 1991 and the learned counsel for the appellant has pointed out that even according to the First Information Report no fatal injury was at all attributed to the present appellant. The other two accused who allegedly caused multiple injuries are proclaimed offenders as seen above. In these peculiar circumstances, the conviction of Pal Singh recorded by the trial Court and that too for the offence under Section 302 of the Indian Penal Code is hereby set aside and he is acquitted of the charge now under consideration. The appellant be released forthwith.

S.O.K.

Before Hon'ble S. P. Kurdukar, C.J., M. S. Liberhan, G. C. Garg,
K. K. Srivastava & Swatanter Kumar, JJ.

M/S SARASWATI INDUSTRIAL SYNDICATE LTD.
YAMUNANAGAR,—*Petitioner.*

versus

THE JOINT EXCISE AND TAXATION COMMISSIONER
(APPEALS) AMBALA & ANOTHER,—*Respondents.*

C.W.P. No. 1325 of 1984

July 10, 1995

Haryana General Sales Tax Act, 1973—S. 9 & 40—Central Sales Tax Act, 1956—S. 9 (2)—Punjab General Sales Tax Act, 1948—Ss. 4(B) and 11-A & 25 of Schedule 'B'—Sugar-cane purchased from growers by Sugar Mills—Liability of Sugar

**M/s Saraswati Industrial Syndicate Ltd. Yamunanagar v. The 509
Joint Excise and Taxation Commissioner (Appeals) Ambala
and another (M. S. Liberhan, J.) (F.B.)**

Mills to pay purchase tax—Law laid down in M/s Jagatjit Sugar Mills's case—Followed & directed issued.

Held, that it is agreed between the parties that show cause notice dated 7th February, 1983 Annexure P-9 be treated as notice under Section 25 of the Act of 1973, as if issued by the Assessing Authority. The petitioner-company agrees to file returns for the assessment years 1971-72, 1972-73, 1973-74, 1974-75 and 1975-76 under the Sales Tax Act as it then stood within 60 days of the order. The Assessing Authority will determine the liability of the petitioner-company to pay purchase tax and other taxes as per the law in existence at the relevant time. There is further agreement between the parties that the returns will be filed within 60 days and no question of limitation with respect to the returns will be raised. The Assessing Authority will decide the tax liability under the law as then applicable in the light of the decision of Hon'ble the Supreme Court in M/s Jagatjit Sugar Mills' case.

(Para 14)

M. S. Liberhan, J.

(1) Material facts are largely common in Civil Writ Petition Nos. 1325, 1374, 1375, 1376, 1377, 1493, 1502 & 2644 of 1984. The question raised in these writ petitions can fairly be regarded as common question of law. Factual matrix in substance can expeditiously be taken from writ petition No. 1325 of 1984.

(2) Petitioner-company is engaged in the manufacture of sugar. Sugarcane, Bardana (gunny bags), other ancillary machinery and material etc. is purchased by the Company for the aforesaid purpose. The petitioner-company is a registered dealer under the Haryana General Sales Tax Act, 1973 (hereinafter referred to as 'Act of 1973') and the Central Sales Tax Act, 1956 (hereinafter referred to as 'Central Act, 1956'). Prior to the Act of 1973, petitioner-company was registered under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the 'Act of 1948') as applicable to Haryana with the amendments made by the State of Haryana from time to time. Petitioner-company filed their return for the year 1971-72. Consequently, an assessment order was passed. The Deputy Excise and Taxation Commissioner (A), Ambala, served the impugned notice under Section 40(2) of the Act of 1973 read with Section 9(2) of the Central Act, 1956 upon the petitioner-company. In this notice it was observed :—"Whereas I, H. S. Ahuja, Dy. Excise and Taxation

Commissioner (A) Ambala, exercising the powers of Excise & Taxation Commission, Haryana under Section 40(2) of the Haryana General Sales Tax Act, 1973/under Section 9(2) of the Haryana General Sales Tax Act, 1973 have on my motion called for the record of the proceedings for the assessment year 1971-72 decided by the Assessing Authority, Yamunanagar, for the purpose of a satisfying myself as to legality or propriety of the order. AND whereas I am satisfied that the aforesaid order contains illegalities/improprieties on the points mentioned below :—

- (i) That the Assessing Authority erred in not levying tax under Section 9 on the purchase turnover of the sugarcane used in the manufacture of sugar, a tax free commodity.
- (ii) The dealer during the assessment year disposed of fixed assets such as machineries vehicles, equipments and tools etc. as chattles but the Assessing Authority did not include the sale proceeds thereof in the turnover of the dealer while framing assessment.
- (iii) The dealer illegally purchased Bardana on the strength of his R.C. and used the same for packing sugar, the Assessing Authority failed to levy penalty under Section 50 of the Haryana General Sales Tax Act, 1973".

(3) The respondent,—*vide* impugned notice proposed to revise the assessment order in exercise of his powers delegated by the Government. It further provided an opportunity of hearing to the petitioner,—*vide* impugned notice.

(4) It would be expedient at this stage to notice that Section 4-B and 11-A of the Punjab General Sales Tax Act, 1948 in pith and substance is parimateria of Sections 9 and 40 of the Haryana General Sales Tax Act, 1973.

(5) The petitioner-company replied to the notice and took the stand parimateria to the grounds taken in the writ petition i.e. sugarcane being an agricultural produce sold by growers etc. is covered by entry 25 of Schedule 'B' of the Act of 1948, consequently no purchase tax was leviable under Section 4-B of the Act of 1948, which corresponds to Section 9 of the Act of 1973. In support of his contention, the learned counsel for the petitioner relied on *Malwa Sugar Mills Co. Ltd. v. The Assessing Authority* (1). Applicability of Section 5(2) sub-section (ii) of the Act of 1948 to the petitioner was

(1) 38 S.T.C. 39.

denied. It was claimed that the tax liability on Bardana once decided by the authorities, cannot be gone into afresh. The limitation of five years for reopening the issue having been expired no fresh assessment can be made. The records are not traceable. The petitioner further sought to know the material before the authority on the basis of which the notices were issued. It was further averred that it is a case of sale of sugar and not of Bardana. The impugned notice amounts to reassessment of escaped turn-over which is within the purview of Assessing Authority and not the revisional Authority.

(6) The petitioner-company impugned the notice, in the present writ petition, succinctly on the grounds that :— The Joint Excise and Taxation Commissioner (Appeals) having once exercised his jurisdiction, cannot reopen the order for reassessment by the Assessing Authority ; levy of purchase tax on sugarcane has been determined Under section 4-B of the Act of 1948, which corresponds to Section 9 of the Act of 1973 on the basis of which the present notice has been issued and the validity of which is under consideration of this Court ; the purchase tax is only leviable if the dealer purchases goods other than specified in Schedule 'B' to the Act ; sugarcane is

mentioned in Entry No. 25 of Schedule 'B' to the Act, hence no purchase tax could be levied. Particular turnover having escaped assessment during the relevant year, the revisional authority in view of provisions of Section 40(1) could not proceed in view of limitation of five years having expired for taking action under Section 31 of the Act of 1973. No purchase tax is leviable on sugarcane as it is a tax free item, as having been purchased from the growers or their family members. The revisional authority having once exercised his jurisdiction under Section 40(1) of the Act, could not reopen the matter again and again.

(7) Similar notice was challenged by way of a writ petition by *M/s Jagatjit Sugar Mills Co. Ltd. v. The State of Punjab* (C.W.P. 382 of 1979) wherein notice issued under Section 4-B of the Punjab General Sales Tax Act, read with Section 6 Schedule 'B' was impugned by and large on the same grounds. In civil writ petition 661 of 1984 *M/s Morinda Co-operative Sugar Mills Ltd. v. Assessing Authority Ropar etc.* challenging the order of assessment imposing purchase tax on the sugarcane sold by the growers themselves, the matter was

referred to the Full Bench of five judges to determine the following questions :—

(i) Whether the Single Bench judgment of this Court reported in *Malwa Sugar Mills Co. Ltd. v. Assessing Authority*, (1976) 38 S.T.C. 39 which had held that Section 4-B of the Punjab General Sales Tax, Act which became effective from 15th November, 1972 did not envisage levy of purchase tax on the purchase of sugarcane which was sold by the growers themselves or by their family members, which had been affirmed by Letters Patent Bench in L.P.A. No. 42 of 1976 as also by the Supreme Court in S.L.P. No. 2000 of 1977,—*vide* order dated 2nd September, 1977 could be overruled by the Full Bench of this Court reported in *Desh Raj Parshotam Lal v. State of Punjab* (1978) 42 S.T.C. 429 ?

(ii) Whether the Full Bench erroneously assumed that Single Bench judgment ran counter to the ratio of Division Bench judgment in *Babu Ram Jagdish Kumar & Co. v. State of Punjab* (1976) 38 S.T.C. 259 ?

(8) It was observed that since the Full Bench cannot examine the correctness of law enunciated by another coequal Bench, so the petition to be decided by a larger Bench of five judges.

(9) Petitioners contended that the questions raised in the present petitions are squarely covered by the questions raised in *M/s Morinda Co-op. Sugar Mills'* case referred to above. Consequently, the matter be examined alongwith the said writ petition. It is in the facts and circumstances collated above, that lead these petitions to come up for hearing before us.

(10) The vital questions posed for consideration during the course of arguments and put in the form of written submissions may be formulated thus :—

(i) Section 6(1), 2(p) and 27(1) (a) (i) of the Haryana General Sales Tax Act, 1973 (Haryana Act, 1973) which are effective from 27th May, 1971 repealed the corresponding provisions of the Punjab General Sales Tax Act 1948, as applicable to Haryana, namely, Section 4(1) and 5(2) with effect from 27th May, 1971, and therefore, whether or not

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the petitioner is liable to purchase tax on the sugarcane purchased by it after that date is to be seen with reference to the amended provisions namely, Section 8(1), 2(p) and 27(1) (a) (i).

- (ii) The object of the impugned notice is to revive the assessment and to include in it petitioner's taxable turnover in respect of purchase of sugarcane during that period, which on the face of it is bound to be excluded from the petitioners' turnover by reason of Section 27(1) (a) (i) of the Act.
- (iii) Further notices under Section 40 of the Haryana Act, 1973 are liable to be quashed in writ proceedings, and this case is not a fit case to be remanded to the Sales Tax Authorities unlike the Punjab Cases, as these are cases of 'assessments yet to be made', since the revisional authority has already expressed his opinion against the petitioners in their counter affidavit filed in response to the writ petitions, consequently remand would be a mere formality.
- (iv) Notices under Section 40 of the Act, are infact seeking to reassess 'escaped turnover' which the revisional authority is not competent to do. There is no functional basis on which the Commissioner could invoke his revisional jurisdiction. Neither there is any illegality or impropriety in the assessment order nor can any be attributed, in view of the fact that at the relevant time sugarcane being in Schedule 'B' item no purchase tax was illiable on it. There is no material on the file to take *suo-moto* action for reopening the assessment order.

(11) Before the mater came up for consideration before us as a sequel to the various proceedings, as narrated above, Hon'ble the Supreme Court decided the matter,—*vide* its judgment reported in *M/s Jagatjit Sugar Mills etc. v. State of Punjab and another* (2), wherein the questions raised were :—

- (i) Whether the petitioner-sugar mill is liable to pay the purchase tax on the sugarcane purchased by it from the growers of sugarcane ?
- (ii) Which is the provision which levies the purchase tax ?

(iii) Whether only the goods mentioned in Schedule (c) are subject to purchase tax ?

(iv) Why does Section 4(1) exempt a dealer dealing in goods exclusively declared as tax free under Section 6 of the Act ?

(12) All these questions have been answered in the said judgement.

(13) Learned counsel for the parties after addressing the Court for sometime fairly conceded that the questions raised are labelled with such complicated facts or anomalies that these could not be segregated.

(14) Keeping in view the totality of facts and circumstances appositely addressed above it is agreed between the parties that show cause notice dated 7th February, 1983 Annexure P-9 be treated as notice under Section 25 of the Act of 1973, as if issued by the Assessing Authority. The petitioner-company agrees to file returns for the assessment years 1971-72, 1972-73, 1973-74, 1974-75 and 1975-76 under the Sales Tax Act as it then stood within 60 days of the order. The Assessing Authority will determine the liability of the petitioner-company to pay purchase tax and other taxes as per the law in existence at the relevant time. There is further agreement between the parties that the returns will be filed within 60 days and no question of limitation with respect to the returns will be raised. The Assessing Authority will decide the tax liability under the law as then applicable in the light of the decision of Hon'ble the Supreme Court in *M/s Jagatjit Sugar Mills case* (supra).

(15) In view of the decision given by Hon'ble the Supreme Court no answer is required to be given in these writ petitions as the questions posed have been rendered academic. All the contentions are kept open. The Assessing Authority is directed to dispose of these matters expeditiously. The petitioners will be at liberty to apply for any direction if a need arises.

In view of the observations made above, the writ petitions stands disposed of accordingly.